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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,341	04/09/2004	James C. Pawloski	J-3676A	9988
28165	7590	12/10/2007		
S.C. JOHNSON & SON, INC. 1525 HOWE STREET RACINE, WI 53403-2236			EXAMINER PASCUA, JES F	
			ART UNIT 3782	PAPER NUMBER
			MAIL DATE 12/10/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/821,341

Applicant(s)

PAWLOSKI, JAMES C.

Examiner

Jes F. Pascua

Art Unit

3782

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 September 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 and 23-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 and 23-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8/8/07, 9/28/07</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 20 and 28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 20, the functional recitation that "the first closing force of the first male and female closure elements is less than the second closing force of the second male and female elements" is indefinite because it is not supported by recitation in the claim of sufficient structure to accomplish the function; especially since the male closure element of the first closure mechanism includes two hook portions and the male closure element of the second closure element includes only one hook portion.

Claim 28 is rejected since it depends from a claim that has been rejected under 35 U.S.C. § 112, second paragraph.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-3, 5-8, 10, 12, 13-17, 19 and 23-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,578,813 to Ausnit (hereafter Ausnit '813) and U.S. Patent No. 3,416,585 to Staller.

Ausnit '813 discloses the claimed invention except that Ausnit '813 shows one of the legs (38) of the second female closure element of the second closure mechanism (17) being straight instead of curved. Staller shows that a curved leg is an equivalent structure known in the art. Figs. 1 and 2 of Staller disclose providing one of the legs of an analogous female closure element as a straightened portion (34) or as a curved arm portion (24). Therefore, because these two female closure element leg shapes were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute the straight leg (38) of the second female closure element of the second closure mechanism (17) in Ausnit for a curved leg.

Replacing the straight leg (38) of Ausnit '813 with a curved leg, as discussed above, inherently meets the recitations "a second female closure element that is substantially identical to the first female closure element" and "a second female closure element that is substantially symmetrical to the first female closure element".

Regarding claim 7, Ausnit '813 and Staller disclose the claimed invention, as discussed above, except for the first closure mechanism (18) being disposed nearer a top of the pouch than the second closure mechanism (17). It would have been obvious to one having ordinary skill in the art at the time the invention was made to locate the first closure mechanism nearer a top of the pouch than the second closure mechanism,

since it has been held that rearranging parts of an invention involves only routine skill in the art.

Regarding claims 14 and 27, Ausnit '813 and Staller disclose the claimed invention, especially the first female element being substantially symmetric about a longitudinal centerline in Ausnit '813. However, Ausnit '813 does not show the second female element (34, 38) also being substantially symmetric about a longitudinal centerline. It would have been an obvious matter of design choice to make the second female element of Ausnit '813 substantially symmetric about a longitudinal centerline, since applicant has not disclosed that a second female closure element being substantially symmetric about a longitudinal centerline (eventhough the second male closure element is asymmetric and capable of engaging only one hook portion of a symmetric female closure element) solves any stated problem or is for any particular purpose and it appears that Ausnit '813 would perform equally well with the second female closure element being substantially symmetric about a longitudinal centerline.

5. Claims 4, 11 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ausnit '813 and Staller as applied to claims 1, 3, 15 and 17 above, and further in view of U.S. Patent No. 5,647,100 to Porchia et al. (hereafter Porchia et al. '100).

Ausnit '813 and Staller disclose the claimed device except for the closure mechanism with the male closure element including two hook portions (i.e., first closure mechanism) having the characteristic comprising a clicking feel when the pouch is closed. Porchia et al. '100 discloses that it is known in the art to provide an analogous

closure mechanism with indentations. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the first closure mechanism of Ausnit '813 with the indentations of Porchia et al. '100, in order to for the first closure mechanism to comprise a clicking feel when the pouch is closed.

Regarding claim 11, Porchia et al. discloses that the closing force of a closure mechanism with indentations is in a range from about 0.16 to about 0.22 pounds force (column 8, lines 17-25). Furthermore, the closing force of the second closure mechanism of Ausnit '813 would at least be half of the closing force (e.g. 0.08 to about 0.11 pounds force) in the first closure mechanism due to the male closure element of the second closure mechanism having only one hook portion. Therefore, providing the first closure mechanism of Ausnit '813 with the indentations of Porchia et al. '100, as discussed above, would inherently result in an overall closing force in the range of 0.20 to about 0.30 pound force.

6. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ausnit '813 and Staller as applied to claim 1, and further in view of U.S. Patent No. 6,167,597 to Malin (hereafter Malin '597).

Ausnit '813 and Staller disclose the claimed device except for each of the first female closure element being adjacent the second closure female element on the first bag wall and the first male closure element being adjacent the second closure male element on the second bag wall. Malin '597 discloses that it is known in the art to provide the first female closure element adjacent the second closure female element on

the first bag wall and the first male closure element adjacent the second closure male element on the second bag wall. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the first female closure element being adjacent the second closure female element on the first bag wall and the first male closure element being adjacent the second closure male element on the second bag wall in Ausnit '813, as in Malin '597, since applicant has not disclosed that such an arrangement of known closure mechanisms solves any stated problem or is for any particular purpose and it appears that Ausnit '813 would perform equally well with the first female closure element being adjacent the second closure female element on the first bag wall and the first male closure element being adjacent the second closure male element on the second bag wall.

Allowable Subject Matter

7. Claims 20 and 28 would be allowable if rewritten or amended to overcome the rejection under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Response to Arguments

8. Applicant's arguments regarding the rejection under 35 U.S.C. 112, 2nd paragraph, filed 09/19/2007, have been fully considered but they are not persuasive. Applicant admits "The recited functional limitation of claim 22 is intended to convey to one skilled in the art the capability or purpose of the structure of the first and second male and female closure elements, rather than the structure of the closure element."

Applicant further states, "The specification clearly supports the claimed function...". It is brought to applicant's attention that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. Moreover, applicant's reliance on paragraph 44, lines 10-11 as support for the claimed function "the first closing force of the first male and female closure elements is less than the second closing force of the second male and female elements" is misplaced. The cited paragraph only discusses changing the thickness of the second male closure element to increase the "external opening force" required by the second closure mechanism. There is no discussion of changing the thickness of the second male closure element to provide a closing force that is greater than the closing force of the first closure mechanism.

9. Applicant's arguments with respect to claims 1-19 and 23-27 have been considered but are moot in view of the new grounds of rejection.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

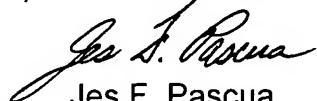
TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 714.02 and MPEP 2163.06. The "disclosure" includes the claims, the specification and the drawings.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jes F. Pascua whose telephone number is 571-272-4546. The examiner can normally be reached on Mon.-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Jes F. Pascua
Primary Examiner
Art Unit 3782

JFP